

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 19, 2008 Session

**STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES, v.
C.W.D., IN THE MATTER OF: T.R.D., (dob 01/13/05) A Child Under
Eighteen (18) Years of Age**

**Direct Appeal from the Juvenile Court for Knox County
No. 69473 Hon. Timothy E. Irwin, Circuit Judge**

No. E2007-02838-COA-R3-PT - FILED JULY 30, 2008

The Trial Court found by clear and convincing evidence that there were grounds to terminate the father's parental rights, and it was in the child's best interest. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Juvenile Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Ben H. Houston, II., Knoxville, Tennessee, for appellant.

Robert E. Cooper, Jr., Attorney General and Reporter and Douglas Earl Dimond, Senior Counsel, Nashville, Tennessee, for appellee.

OPINION

This is an action by the Department of Children's Services to terminate the parental rights of the father, C.W.D. to his son, T.R.D.

In the Complaint, plaintiff alleged that the child was taken into custody on March 21, 2005, and had been in foster care since then. Plaintiff outlined that the child had been in custody for more than six months and the conditions leading to removal still persisted; that the father had made no reasonable efforts to establish a suitable home for the child; and had failed to comply with his

parenting plan.

The evidentiary trial occurred over several different days, and at the conclusion of the last hearing the Court took the case under submission.

The Court entered an Order on December 6, 2007 and found that the child came into custody on March 21, 2005, that both parents continued to use drugs in 2005 and 2006, and that the termination petition was filed in July 2006.¹ The Court found the father entered treatment for drugs in January 2007, and had remained drug-free. The Court found the father had visited regularly, except for two periods when his visitation was interrupted due to a restraining order, that the child had lived with the same foster family since coming into custody, and that both experts testified that the child's strongest attachment was with the foster family. Also that he had a substantial attachment to the mother, but that his attachment to the father, if existing, was less significant.

The Court further found that there was evidence of hostility between the father and the foster parents, and the father had exhibited anger and loss of temper on several occasions. The Court found the foster parents had exacerbated the hostility by their own actions.

The Court found the persistence of certain conditions had not been established, because of the father's continued sobriety, and his ability to be rehabilitated was promising, but the Court found the department had proven the ground of substantial noncompliance with the plan by clear and convincing evidence, because the father had no suitable housing, had only completed 1.5 hours of anger management training, had refused to cooperate with assessments that were set up for him, and had delayed his rehabilitation efforts for such a long period that it seriously impacted his ability to bond with his child. The Court concluded that the father had progress in some areas, but had "failed in most." The Court said the father's choices to refuse to cooperate with treatment, to stay with an addicted wife, and to continue to use drugs for nearly two years showed that he had not substantially complied with his plan. The Court found that DCS had made reasonable efforts at reunification, and that the father had failed to make such an adjustment of circumstance that it would be safe for the child to be returned to him, and it was in the child's best interests to terminate the father's parental rights. The Court stated:

... this is a prospective adoptive home. Termination of the father's parental rights enables this child to avoid the horrors of uncertainty that he has had to face for the first two and one-half years of his life while his parents failed to meet their goals of reunification. The failures of the past two and one-half years led to a loss of quality interaction by the father with the child that the father's late recovery cannot remedy.

¹The record reflects that plaintiff had filed a separate termination proceeding against the mother.

The father appealed and raises these issues:

1. Did the Trial Court err by terminating father's parental rights based on substantial noncompliance where DCS failed to enter a complete copy of a ratified permanency plan into evidence?
2. Did the Trial Court err in by terminating father's parental rights when the evidence demonstrated that DCS failed to make reasonable efforts to reunify?
3. Did the Trial Court err by terminating father's parental rights when there was not clear and convincing evidence of substantial noncompliance?
4. Did the Trial Court err in finding that the child's best interests were served by termination?

The father argues that it was inappropriate for the Trial Court to terminate his rights based on substantial noncompliance with his permanency plan, when the plan was never offered into evidence. Exhibit 2F, however, is a copy of the plan, which lists his responsibilities, including maintaining safe and stable housing, maintaining a cooperative relationship with DCS and the Court, providing financial support (which includes obtaining and keeping employment), and maintaining a drug free lifestyle (which includes an A&D assessment/treatment). Exhibit 20 is a copy of the amended plan, which adds the responsibilities of participating in the child's therapy, obtaining a mental health assessment, and obtaining anger management counseling. The record shows what the father's responsibilities were under his permanency plans, moreover, the father admitted in his testimony that he knew what his responsibilities were. Further, the father raised no issue at trial regarding the permanency plans being entered into evidence, and stipulated to their admission. This issue is without merit.

The father argues that his rights should not be terminated because DCS did not show that they made reasonable efforts to reunify him with the child. This Court has recognized that:

For the purpose of proceedings such as this one, the Department's reunification efforts are "reasonable" if the Department has exercised "reasonable care and diligence ... to provide services related to meeting the needs of the child and the family."

In re Giorgianna H. 205 S.W.3d 508, 519 (Tenn. Ct. App. 2006).

We have further recognized that the Department's efforts need only be reasonable, and not "herculean". *Id.* The evidence in this case shows that the Department's efforts to provide services were reasonable. The caseworkers provided the parents with numerous referrals for assessments, treatment, etc., provided transportation for visits, meetings, and hearings, either via physically transporting the parents or giving them bus passes, set up visitation and facilitated the

same, and arranged for the parents to participate in the child's therapy. The Department worked with the parents for over two years, and cannot be faulted where the parents failed on numerous occasions to avail themselves of opportunities that were presented to them.

Next, the father argues the DCS did not prove by clear and convincing evidence that he failed to substantially comply with his parenting plan. The evidence established that of the responsibilities listed on father's permanency plan, the only one that he had complied with was going through drug treatment and remaining drug free for a substantial period of time at the time of trial (although it took him two years to get serious about doing so). The father remained without suitable housing, had not completed sufficient anger management training, had failed to learn about the child's therapy due to his bad behavior at the therapy sessions, and had failed to maintain steady visitation, once again due to his behavior during his visits. As the Trial Court found, the father's efforts were somewhat "too little, too late" since he had not made any significant progress on the drug issue in the first two years following removal, and had failed to make any real progress in the other areas. The evidence supports the Trial Court's findings on this issue. Tenn. R. App. P. 13(d).

Finally, the father asserts that it was not shown that termination was in the child's best interests. This analysis requires consideration of the factors listed in Tenn. Code Ann. §36-1-113(I), which includes:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use

of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The father did not show that he had made such an adjustment of circumstance that it would be safe for the child to be with him, because he had no home where he could bring the child, had not completed anger management counseling, had exhibited numerous instances of hostile behavior, and had not familiarized himself about the child's therapy. The father had failed to improve his circumstances despite reasonable efforts by DCS. He had failed to maintain regular visitation due to missing appointments and was banned from appointments due to his violent behavior. Also, the father failed to establish a meaningful attachment with the child, as both experts stated, and it was also opined by experts that a change of homes would be extremely detrimental to the child. There was no evidence regarding whether child support had been paid.

Based on these factors, it is clear that it was in the child's best interest to terminate the father's parental rights and we affirm the Trial Judge's Judgment.

The cost of this appeal is assessed to C.W.D.

HERSCHEL PICKENS FRANKS, P.J.